

IN THE  
**Supreme Court of the United  
States.**

OCTOBER TERM, 1912.

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S. T. GRAY AND ROBERT BRADY,  
VS.

ROBERT H. TAYLOR ET AL.

ATTORNEY GENERAL, EX REL.,  
VS.

THE BOARD OF COUNTY COMMIS-  
SIONERS OF LINCOLN COUN-  
TY, NEW MEXICO.

} No. 653.

} No. 889

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**BRIEF OF APPELLATEES.**

**LEGALITY OF CHAPTER 80 OF THE LAWS OF 1909.**

Appellants, in their brief concede that Chapter 80—the validity of which they have brought in question—was a part of the officially published laws of New Mexico of 1909, (page 2 of appellants' brief).

It is not claimed that Council Bill No. 86 did not pass both houses of the legislature, only that the presiding officers failed to place their certificates of passage thereon.

In *McDonald vs. State*, 80 Wis. 407, the court said:

"We think no court has ever declared an act of the legislature void for non-compliance with the rules of procedure made by itself, or the respective branches thereof, and which it or they may change or suspend at will."

"The signature of a presiding officer to a bill is a mere certificate to the governor that it has passed the requisite number of readings and been adopted by the constitutional majority of the house over which he presides."

*Cottrell vs. State*, 9 Neb. 125-128.

"Does the failure of the presiding officer of the senate to sign said bill invalidate everything connected therewith? If it does, then the presiding officer of the senate has more power to veto bills than the governor or than any other person or officer of the state."

*Leavenworth County vs. Higginbotham*, 17 Kan. 74.

"This court will presume that an act found among the published laws, bearing the approval of the governor, was constitutionally passed."

*Ill. Central R. R. Co. vs. Wren*, 43 Ill. 77;  
*Bedard vs. Hall*, 44 Ill. 91.

"Upon demurrer to an indictment on the ground that the statute on which it is based was not passed in a constitutional manner, the presumption of the validity of the law must prevail, since, until the journal entries are brought before the court, they will not be considered in passing upon the validity of the law."

*State vs. Wray*, 109 Mo. 594;

Opinion, pages 19-21, Transcript No. 653.

If the acts found in the officially published statute books can be brought in question simply upon the allegations of litigants, without further proof of their invalidity, there would ensue endless and needless confusion in all matters before the courts for adjudication. The reasonable presumption is that these official publications contain the enactments of the legislature and they should be discredited only upon proof of failure of their legal enactment. Although the burden was on the plaintiffs to prove their allegations, they have failed to make such proof.

#### *Special and Local Legislation.*

The only ground alleged by appellants as to the conflict between Chapter 80 of the laws of 1909 and the laws of the United States, is that the territorial act is local and special in its nature. This act is general in its terms and applies to all counties which come within its conditions. There is no proof in this case tending to show that every county in New Mexico does not come within those conditions and limi-

tations, though counsel has gone outside the record to urge that Lincoln is the only county of the class named in the statute.

"That the number is limited or restricted does not make the bill a private or local one within the constitutional meaning and intent of these words."

*People vs. Squires*, 107 N. Y. 593, and authorities cited;  
1 Am. St. Rep. 893.

"A law is not necessarily a local law because the practical effect and operation of the law is and must be in every instance local, special and private. It is sufficient that the law offers like privileges to all who may comply with its terms or come within its provisions."

13 Am. & Eng. Enc. of Law (1st Ed.), 984.

"An act in general terms is valid."

*Ritchie vs. Franklin County*, 89 U. S. (22 Wall.) 67.

"This construction by the Supreme Court of the State which enacted the law is conclusive in this court, as well as everywhere, as to its character."

*Hammond & Company vs. Hastings*, 134 U. S. 401.

The Supreme Court of New Mexico declared this act to be general and not in conflict with the acts of Congress. *Codlin vs. Kohlhausen*, 9 N. M. 565. In both the cases at bar that court reaffirmed the decision

in the case referred to. See opinion in No. 653, 40-44, No. 889, 24.

### *Registration of Voters.*

The appellants contend that a registration of the voters of the county was necessary and that the failure to procure such registration invalidated the election.

Section 1702, Compiled Laws, 1897, provides for a registration only before a general election. This section, enacted in 1889, clearly repeals, by implication, Section 1709, passed in 1869, as it covers the whole subject of the older law and was intended as a substitute therefor.

*U. S. vs. Tynen*, 11 Wall. 88-89;  
*Bartlett vs. King*, 12 Mass. 545;  
*Commonwealth vs. Cooley*, 27 Mass. 37;  
*Tracy vs. Tuffy*, 134 U. S. 206;  
*U. S. vs. Barr*, 4 Sawyer, 254;  
*Swan vs. Buck*, 30 Miss. 268-308;  
*School District vs. Whitehead*, 13 N. J. Eq. 290-291;  
*Roche vs. Jersey City*, 11 Vroom, 262.

The Supreme Court of New Mexico has decided in the cases at bar that no registration was necessary. 40-44 and 45-46 of record No. 653 and 24 of record 889.

### *Form of the Petition.*

Objection is made to the form of the petition

submitted to the Board of County Commissioners. The only prayer the board could have granted was just what the petitioners asked for, and that was to call an election for the purpose of voting on the proposition to remove the county seat to Carrizozo. The board could not change the county seat; it could only call an election under the statute. There could be no question as to the object and purpose of the petition; it could not have meant to secure the retention of the county seat at Lincoln; the purpose and intent was so apparent that none could be deceived or misled thereby; it expressly stated that the election was to be for a removal to Carrizozo, the place and the only place designated, by the only method prescribed by the act—an election.

The petition was in substantial compliance with the statute. *Gray et al. vs. Taylor et al.*, at bar, pages 40-44 of transcript No. 653.

Appellants claim that many signed the petition under the belief that it meant to secure the retention of the county seat at Lincoln, and undertake to give color to such claim by the statement that the number of votes actually cast for Carrizozo fell two hundred or more short of the total number of names signed to the petition (pages 80-81 of appellants' brief).

It is shown that 900 votes were cast for Carrizozo and 613 for Lincoln, (paragraph 6, page 16 of transcript No. 889), but inasmuch as there is no record of the number of names signed to the petition no computation can be made and this claim cannot be

aided by a simple statement of appellants, unsupported by the proof. Nor is there any proof that any signer was induced to place his name to the petition by being led to think its purpose was to retain the county seat at Lincoln. If fraud and misrepresentation were resorted to in a few instances as claimed, this could not have had relation to the form of the petition as that spoke for itself to every one signing it.

There was a large excess of names to the petition over the requisite number after deducting all who claimed to have signed it through misrepresentations, (page 20, transcript No. 653), and the proof shows an unusually fair election, where only one vote was cast illegally and that one was cast for the town supported by appellants (pages 20-21, transcript No. 653).

These records and the transactions pertaining to the removal of this county seat appear to lead to the irresistible conclusion that the people of Lincoln County, New Mexico, by a large majority, fairly and honestly desired the change. Their interests as well as their convenience demanded the location of their county seat upon the main line of railroad running through the county, at the principal town in the county, from a place with little population and which is practically inaccessible, and subterfuges and groundless technicalities should not be used and considered to defeat these material interests and desires.

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